* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 5.7.2007
Delivered on: July 9, 2007

\+ CRIMINAL REVISION PETITION No. 373/2002

BIMLA GUPTA & ORS ..... Petitioner
Through : Mr. Salil Kumar Jha with
Mr. Rajeev Aggarwal, Advocates.

versus

STATE OF DELHI ..... Respondent
Through Mr. Pawan Sharma, Advocate.

CORAM:
Mr. Justice S. Ravindra Bhat:

1	Whether reporters of local papers may be allowed to see the judgment.?	yes
2.	To be referred to the Reporter or not?	yes
3.	Whether the judgment should be reported in the Digest?	yes

Mr. Justice S. Ravindra Bhat:

1. This revision petition is directed against an order on charge dated 19.3.2002 by the learned Additional Sessions Judge (hereafter referred to as the "trial Court"). By that order the petitioner accused along with others were charged with commission of offences punishable under Sections 498-A/ 304-B read with Section 34 Indian Penal Code (hereafter called "IPC").

2. The facts necessary to decide this petition are that the marriage between the deceased Geeta and Rajesh (one of the accused who is not a revisionist in these proceedings but has been arrayed as A-8) took place on 17.7.1999. Unfortunately the marriage was short-lived. Late night on the 15th of August, 1999, when the couple were traveling, their car collided with a stationery oil

tanker. Geeta succumbed to her injuries. A-8 Rajesh too suffered injuries and was hospitalized in the Intensive Care Unit for some time.

3. In the immediate aftermath of the incident on 16.8.1999 Shri Sham Lal Gupta, father of the deceased Geeta made a statement. In that he did not attribute any mischief or foul played by any accused. He stated that the marriage of his daughter with A-8 took place under normal circumstances. Later, in another statement, dated 22-9-1999, the said Shri Gupta claimed that the deceased's mother-in-law and other relatives taunted her immediately after the marriage for bringing insufficient dowry. He also claimed that the petitioner No.1 (who is the paternal uncle of A-8, the husband) too had taunted the deceased. This version was corroborated in a statement by Smt. Suman Gupta, mother of the deceased. Her statement too was recorded on 22.9.1999. On the basis of these materials the trial Court by its impugned order proceeded to frame the charges. The order impugned is short one. It does not contain reasons and reads as follows :

> *"19.3.02 Present: APP for State*
>
> *All the accused on bail with counsel.*
> *Arguments on charge heard.*
>
> *The counsel for the accused states that no charge is made out against any of the accused persons. I have perused the record and I find that there is sufficient material against all the accused persons and a prima facie case U/s 498A/304B/34 IPC is made out against all the accused persons. Charge U/s 498A/304B/34 IPC is framed against all the accused persons to which they pleaded not guilty and claimed trial. Case now to come up on 3.5.02 for P.E.*
>
> *ASJ Delhi 19.3.02"*

4. It is contended on behalf of the petitioners that the impugned order is unsustainable because there is no material much less credible material to raise a

grave suspicion that the petitioners could have committed the offences they have been charged with. It is contended that the nature of the incident which led to the unfortunate death of Geeta was such that no foul play could be attributed. It was not a case of unnatural death of the kind the legislature contemplated when Section 304-B was enacted. Learned counsel relied upon the materials including the evidence of PW-2, PW-3 & PW-4 to say that all of them clearly mentioned that an accident took place on the fateful night when the oil tanker was stationed near a petrol pump. Therefore, there was no question of death being the result of any proximate link between a dowry demand and the incident which led to the death of Geeta. That was a result of an unfortunate motor accident.

5. Learned counsel relied upon the text of Section 304-B and submitted that there is no legal evidence in support of a charge under the provision. He submitted that the Court should be satisfied that death resulted due to demands for dowry made by the husband or his relatives. It was submitted that there is no live or proximate link between alleged demands spoken about by the prosecution witness, and the death which was purely accidental.

6. It was next contended that the petitioners no doubt are relatives of the deceased's husband. They are the brother, sister-in-law and niece of the deceased's father-in-law. Learned counsel contended that the nature of behaviour required to be established or proved for an offence under Section 498-A should be of such nature that in the natural and reasonable course of events, the wife could be driven to commit suicide. Counsel contended that mere taunts as alleged in the supplementary statements dated 22.9.1999, cannot be the basis for such a charge. At best it might amount to a suspicion but in the absence of any evidence to show persistent cruel behaviour or nagging and demands for dowry,

the charge under Section 498-A is unjustified.

7. Learned counsel for the respondent submitted that although the initial statement of the deceased's father was not suggestive of any suspicion, yet he later made a statement on 22.9.1999. That statement as well as the statement of his wife, leveled clear and serious allegations against the deceased-in-laws as well as the petitioners in this case. The mere fact that the petitioners were not part of the immediate family cannot absolve them from having to face trial.

8. It was contended by Mr. Sharma learned APP that recording of statement subsequent to the event cannot be considered unnatural. In the class of offences such as dowry deaths etc., the Courts have taken a view that later supplementary statements cannot be fatal to prosecution cases. He submitted that there can be no uniformity in the manner people react. Some would be able to withstand shock and make a calm and reasoned statement whereas others would be unable to withstand pressure on account of emotional trauma. He relied upon the judgments of the Supreme Court reported as *Alamgir Saini vs. State,* 2003 SCC (Crl) 1447 and *Ram Badan Sharma Vs. State of Bihar,* AIR 2006 SC 2855.

9. Learned counsel also contended that the death in this case had occurred within 7 years of the marriage and indeed within a month. Therefore, the statutory presumption under Section 113-B of the Evidence Act clearly applied. He, therefore, justified the charges and submitted that they do not call for interference.

10. The undisputed factual matrix so far as the incident leading to death is concerned is that just about a month after the marriage, the couple were traveling in a car when an unfortunate accident occurred. The collision between the car and the oil tanker resulted in serious injuries to the wife and she succumbed to them. The accused husband also suffered injuries and was hospitalized. On these materials, and in the absence of any other supporting evidence or statement, the allegations as far as the petitioners are concerned, appears to be far-fetched. There is no doubt that the death occurred as a direct result of the accident. The inspection of the vehicle photographs as well as the statements recorded during investigations corroborate this fact.

11. Section 304-B reads as follows :-

> *"(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances with seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative or her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*
> *(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. "*

12. In the application of the provision the following ingredients have to be present :-

1. Death due to burns or bodily injuries or otherwise then under normal circumstances within seven years of marriage;
2. The deceased having been subjected to cruelty or harassment by her husband or his relatives soon before death;
3. Such cruelty or harassment being in connection with demands for dowry.

13. The legislative intention for enactment of Section 304-B as well as 113-B of the Evidence Act was to curb the menace of dowry death. The creation of special offences and enactment of presumption in the case of unnatural death was on account of recognition of the reality that such practices occur in secrecy and more often than not and the privacy of the home; direct evidence would be hard to get. Cruelty or harassment may not be merely a physical cruelty. It can also be mental cruelty. Yet the link between the harassment and the death has to be clear, which the prosecution has to establish. The Supreme Court has held that the harassment for dowry and the factum of death must have a proximate or live link

in order to successful prosecution. In the absence of any material direct or circumstantial to establish such a link, the prosecution under 304-B would not be justified (Ref. *Arvind Singh Vs. State of Bihar* AIR 2001 SC 2124; *Kans Raj Vs. State of Punjab & Ors.* AIR 2000 SC 2324). In the facts of this case it is apparent that whatever be the allegations against the accused husband or his parents, no materials exist on the record pointing to the crucial "proximate and live link" between the alleged cruelty and the death vis-a-vis the Petitioners. Indeed the materials existing point to an accidental death and have been corroborated by the witnesses of the prosecution. The documents in the form of mechanical report investigations etc. also establish these. Therefore, I am of the opinion that the trial Court did not apply its mind and fell into error in framing charges under Section 304-B IPC.

14. The next question is as to whether in the facts of these case the charge under Section 498-A is justified. There is a considerable body of case law that although there is certain element of over-lapping between two offences yet Section 304-B is in aggravated form and applies where death occurs. The distinction between the two kinds of offences may be described as the first (Section 498-A) dealing with offensive behaviour which can lead to suicide and the Section (304-B) being an offence on account of unnatural death which is the result of such unacceptable and offensive behaviour. This distinction is to be kept in mind because the behaviour sought to be outlawed, namely cruelty has to be established.

15. Section 498-A, through its explanation defines cruelty. The fact situation contemplated is cruelty of such magnitude as would lead the wife to commit suicide on account of dowry demands by the husband or his relatives. The second

contingency or fact situation contemplated by Section 498-A is wilful conduct which is likely to drive the woman to commit suicide or cause a grave injury or danger to life.

16. The supplementary statements which are the only materials and have been heavily relied upon, attribute cruel behaviour to the Petitioners No.1 & 2. However, there is no iota of evidence as far as the third petitioner, their daughter, is concerned. So far as the first two petitioners are concerned, the parents of the deaceased wife claimed that she had, immediately after the marriage (when she returned to the parental home) alleged that she was taunted by her in-laws, and the second petitioner. The first statement of the deceased's father did not level any allegations. The supplementary statements of the deceased's parents were recorded in identical terms, on 22.9.1999.

17. I have considered the charge sheet, statements and the supplementary statement of the deceased's parents, which allege that :

(1)Geeta mentioned about taunts by her mother in law, after marriage that the gifts and articles given in her marriage were insufficient. According to the parents in law, they had spent Rs.35 lakhs for their daughter's marriage.

(2)The second petitioner reportedly told Geeeta that she should arrange for Rs.10 lakhs to help Bunty (her brother-in-law) to set up business.

(3)Though the incident was allegedly narrated by Geeta to her mother, she was asked not to tell her father, who was suffering from blood pressure.

(4)Geeta's in-laws allegedly threatened her parents, after the accident. A report was lodged with the Paschim Vihar Police Station on 12.9.1999.

18. It is apparent that there is considerable delay between the two statements,

i.e 16.8.1999 and 22.9.1999. The latter statements narrate about taunts by Geeta's parents-in-law and the first two petitioner; the second petitioner allegedly asked her to arrange for Rs.10 lakhs. Although an allegation about police report dated 12.9.1999 was made, that is not supported by any document.

19. The Court, while considering whether or not charges should be satisfied that prima facie, the materials disclose "grave suspicion" that the accused committed the offences. No doubt, the nature and quality of evidence should not be meticulously examined. Yet the Court should be satisfied that "grave suspicion" about the accused's role exists. This was the law declared in *Union of India Vs. Prafulla Chandra Samal* AIR 1979 SC 366; it continues to be so today.

20. The evidence relied upon is the statement that Geeta was taunted, by her in-laws after marriage. As far as the Petitioners are concerned, it is alleged that they asked the deceased to arrange for a further amount, to help her brother-in-law's business. This is no doubt some evidence; it may even be said to raise suspicion. However, in my opinion, this material, by itself cannot constitute "grave suspicion", warranting charges. I am therefore of the opinion that there is insufficient evidence, to conclude that the petitioners, prima facie, were involved in commission of the offence punishable under Section 498-A IPC.

21. In view of the above reasons, the petition is entitled to succeed. The impugned order, and charges framed against the Petitioners are hereby set aside. The petition is thus allowed, without any order as to costs.

July 9 2007

(S. RAVINDRA BHAT)
JUDGE